IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NOs: 16000 of 2004&92 of 2005

W.P.No.16000/04

Between:

Kotha palli Kasiviswanath Raju S/o. Late Suryanarayana Raju,
Palakoderu, Bheemavaram mandal, W.G.District.

..... PETITIONER

AND

1 The District Collector, West Godavari district.
2 The Revenue Divisional Officer, Bheemavaram, W.G.District.
3 The Mandal Revenue Officer, Bheemavaram, W.G.District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue a writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of the Respondent Authorities in publishing the 4 (1) Notification Dt.19.8.2004 published in Eenadu Newspaper on 25.8.2004, dispensing with Section 5A and Section 17(4) as arbitrary, illegal, null and void and is against the principles of natural justice and norms of the public policy, and pass.

Counsel for the Petitioner: MRS.S.NANDA

Counsel for the Respondent No.: GP FOR REVENUE

WRIT PETITION NO : 92 of 2005

Between:

M.V.S.Padmavathi, W/o.Jagapathi Raju,
R/o.Venkateshwara Apartments ASR Nagar, Bheemavaram-2.

..... PETITIONER

AND

1 Government of A.P. Rep. by its Secretary Rev.Dept.,
Secretariat Building, Hyderabad.
2 The District Collector, West Godavari District Eluru,
West Godavari District.
3 The Land Acquisition Officer Revenue Divisional Officer
Narasapur, West Godavari District.
4 The Commissioner, Bheemavaram Municipality Bheemavara,
West Godavari District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 2nd respondent in issuing 4 (1) notification vide Proceedings Roc No.G2/3665/2004 Dt.19.8.2004 by dispensing with 5-A enquiry under Section 17(4) of the Land Acquisition Act as arbitrary, illegal and contrary to Article 14 and 21 of the Constitution of India, consequently call for the records pertaining to the impugned notification vide Roc No.G2/3665/2004 and set aside the same and pass such other order or orders.

Counsel for the Petitioner: MR.D.JAGAN MOHAN REDDY

Counsel for the Respondents 1 to 3: GP FOR LAND ACQUISITION

The Court made the following:

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.NOs.16000 OF 2004 AND 92 OF 2005

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COMMON ORDER:

Petitioner in W.P.No.16000 of 2004 who is the owner of Acs.5.06 cents and petitioner in W.P.No.92 of 2005 who is the owner of Acs.5.75 cents filed these petitions questioning the Notification dated 19-08-2004 issued by the District Collector, West Godavari (first respondent in W.P.No.16000 of 2004 and second respondent in W.P.No.92 of 2005) under Section 4 (1) of the Land Acquisition Act (for short 'the Act') proposing to acquire 127 acres for construction of summer storage tank under Bheemavaram Town Drinking Water Development Scheme, dispensing with the enquiry under Section 5 (A) of the Act.

(2) The case of the petitioners is that since the Notification impugned does not disclose the reasons for the urgency and for dispensing with the enquiry under Section 5 (A) of the Act, the same is liable to be set aside.

(3) Learned counsel for petitioners strongly relying on **UNION OF INDIA v. KRISHAN LAL ARNEJA ,** and **UNION OF INDIA v. MUKESH HANS ,** contended that the impugned Notification is liable to be quashed.

(4) The contention of the learned Government pleader is that since the acquisition is for public purpose of digging a tank for water storage by extending the existing water storage tank, and since not only the land of the petitioners but lands of several others is also are proposed to be acquired, no *mala fides* can be imputed and so in view of the ratio in **FIRST LAND ACQUISITION COLLECTOR v. NIRODHI PRAKASH GANGOLI ,** there are no grounds to interfere with the impugned Notification.

(5) Some villagers, after coming to know about the intention to acquire land for digging of summer storage tank, filed W.P.No.13467 of 2004 which was disposed of on 02-08-2004 by a learned single Judge, observing as follows:

> "the issue whether the land on the western side should be acquired or northern side should be acquired and which method of implementing the Scheme is more feasible or cheaper are all matters which cannot be

adjudicated by this Court, especially when there is no material before this Court. Indeed these issues are not justifiable in a petition for judicial review. As on today, the petitioners' right is not affected, and as and when land acquisition proceedings are initiated, it is always open to the petitioners to raise all the submissions. It must be noticed that the power of eminent domain of the sovereign to acquire the lands for public purpose cannot be superceded or overshadowed by the interests of a person, who wants to save his own land. The writ petition is misconceived."

It is pertinent to note that the contentions in these petitions are almost similar to the contentions that were raised in W.P.No.13467 of 2004, which were held to be not justifiable. So, the contention that land on some other side, but not on the side on which the petitioners lands are situated, are more suitable for construction of the summer storage tank, cannot be countenanced by this Court.

(6) It is well known that in an enquiry under Section 5 (A) of the Act, the person whose land is proposed to be acquired can raise only three contentions i.e., 1) the proposed acquisition is not for a public purpose, 2) some land other than the land proposed for acquisition is more suitable for the public purpose and 3) personal grounds as to why the land should not be acquired. (See Delhi Administration Vs. gurudip Singh Uban ((2000) 7 SCC 296 para 53).

(7) Since the acquisition is for construction of a summer storage tank, for supply of drinking water to the residents of Bhimavaram under 'Bhimavaram Town Drinking Water Development Scheme', undoubtedly, the purpose of acquisition is a 'public purpose'.

(8) The land proposed to be acquired is adjacent to the existing summer water storage tank. Land on which side of the existing water tank is suitable for its extension has to be decided by the experts. It is not for the Court, or the parties, to decide the suitability of the land. From out of the total extent of Acs.127.00 proposed to be acquired, both petitioners put together own less than Acs.11.00 cents. The owner of the remaining about Acs.116.00 cents of land did not raise objections for

the acquisition. So, just for the sake of convenience of the petitioners neither the site can be changed nor the acquisition can be stopped, because public purpose prevails over private interest. In the circumstances of the case, the proposed acquisition of the land of the petitioners cannot be said to be mala fide.

(9) In KRISHAN LAL ARNEJA case (1 supra), 14 properties, which were in possession of the Government under the Defence of India Rules, were proposed to be acquired by invoking Section 17 (4) of the Act dispensing with the enquiry under Section 5 (A) of the Act. In the facts and circumstances of that case, the Apex Court held that dispensing with the enquiry under Section 5-A of the Act was mala fide. In MUKESH HANS case (2 supra), the acquisition was for the purpose of a festival called “Phool Walon Ki Sair”. In the facts situation of that case, on the ground that the Lt. Governor was not appraised of all the facts and circumstances of the case, when he issued the impugned Notification in that case, the Apex Court set aside the Notification. The facts in this case are entirely different from the facts in those cases. In NIRODHI PRAKASH GANGOLI case (3 supra), the Apex Court held that when the Court is called upon to examine the question whether an acquisition is mala fide or not, it has to see whether the purpose for which the acquisition is going to be made, is real or a camouflage, and so long as the purpose of acquisition continues to be a public purpose, it cannot be said to be mala fide. It was also held that question of urgency of acquisition under Section 17 (1) and (4) of the Act is a matter of subjective satisfaction of the Government, and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts, and when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Section 17 (1) and (4) of the Act, and issues Notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that

the decision has been taken by the appropriate authority *mala fide*. In the facts and circumstances of the case, respondents invoking the urgency clause and dispensing with the enquiry under Section 5-A of the Act, cannot be questioned by the petitioner.

(11) In view of the above, I find no merits in these petitions and so the petitions are dismissed. No order as to costs.

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(C.Y.SOMAYAJULU, J)

Dated: 19 -04-2005

YCR

To

1 The District Collector, West Godavari district.
2 The Revenue Divisional Officer, Bheemavaram, W.G.District.
3 The Mandal Revenue Officer, Bheemavaram, W.G.District.

4 The Secretary, Government of A.P. Revenue Department,
Secretariat Building, Hyderabad.
5 The Commissioner, Bheemavaram Municipality Bheemavara,
West Godavari District.

6. 2 CCs to G.P. for Revenue, High Court Buildings,
Hyderabad (OUT)

7. 2 CCs to G.P. for Land Acquisition, High Court Buildings,
Hyderabad (OUT)

8. 2 C.D. copies.

9. Land Acquisition Officer/Revenue Divisional Officer,

Narsapur, West Godavari District.